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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Complaint of)
Central Intelligence Agency)
against)
American Broadcasting Companies, Inc.)

Staff Ruling

Adopted: JAN 10 1985 ; Released: JAN 10 1985

By the Chief, Mass Media Bureau:

1. The Commission has under consideration a November 21, 1984, complaint against the American Broadcasting Companies, Inc. (ABC), filed by the Central Intelligence Agency (CIA), alleging intentional news distortion, and violation of both the Fairness Doctrine and the Personal Attack Rule. 1/

2. The complaint is directed to material contained in broadcasts of the "ABC World News Tonight" aired September 19, 20, 26, and November 21, 1984. During this programming ABC presented segments concerning the CIA's alleged participation in plots to assassinate American citizens, and other questionable and illegal acts. At the heart of the complaint is the CIA's contention that ABC aired these broadcasts without any attempt to verify the accuracy of the allegations and with the knowledge that many of the

1/ On November 30 the CIA supplemented its complaint by letter and provided video tape excerpts of the relevant "ABC World News Tonight" broadcasts. On December 11 the Media Access Project (MAP) filed its opposition to the complaint. On December 12 the Radio-Television News Directors Association (RTNDA) also filed an opposition. On December 14 the American Legal Foundation (ALF) filed a statement opposing any consideration of MAP's opposition. Because of our determination herein, it is not necessary to consider these pleadings in detail. However, one argument does necessitate comment. MAP contends that, as a government agency, the CIA has no standing to file its complaint. We disagree. Neither our news distortion policy nor the Fairness Doctrine limits the filing of complaints to any specific entities or individuals.

allegations were untrue. 2/ The CIA argues that ABC compounded the seriousness of these alleged misdeeds by failing to take any remedial action after the CIA had lodged a complaint with the network and had met with network officials on three occasions. The CIA contends it has furnished "compelling extrinsic evidence" demonstrating ABC's suppression of known facts and its repeated

2/ More specifically, the complaint claims that ABC:

- (1) relied solely on the unverified statements of a source who had been discredited and proven to be unreliable;
- (2) suppressed all contrary evidence;
- (3) presented statements that were facially absurd and patently false, and,
- (4) knowingly produced a program which was replete with numerous false statements and allegations about the CIA, the most outrageous being that the CIA conspired, and set in motion a plan, to assassinate Ronald Rewald, and a claimed threat to shoot a United States citizen through the heart and make his death look like a heart attack.

refusal to repudiate its previous news broadcasts when these facts were brought to its attention. 3/

3. The CIA asserts that ABC's news coverage concerned a controversial issue of public importance identified as "the participation by the Central Intelligence Agency in illegal acts, including assassination." As such, the CIA urges that the Fairness Doctrine and the Personal Attack Rule are applicable. Regarding the Fairness Doctrine generally, the complaint states that "[ABC's] entire programming has presented what manifestly is only one side of the issue -- a side predetermined by ABC and a presentation engineered to support that side." With respect to the Personal Attack Rule, complainant argues that ABC's charges, including "conspiracy to commit murder"

3/ The following appears to be the extent of the complaint's "extrinsic evidence." With respect to its allegation that ABC failed to verify certain claims and disregarded repudiations by high CIA officials, particularly concerning assassination plots, the complaint states:

In 1982, ABC terminated the production of a news broadcast, also involving assassinations and based in part on the statements of Barnes [Scott Barnes, who during the broadcasts addressed by this complaint claimed he was asked by the CIA to kill Ronald Rewald], when ABC became aware of his unreliability.

The complaint states further:

On 12 September 1984, one week prior to airing the news broadcasts which are the subject of this complaint, the CIA specifically and categorically denied to ABC that the CIA ever "let a contract" or otherwise attempted to assassinate Ronald Rewald.

With respect to its allegation that ABC failed to include or suppressed information contained in public records, the complaint states:

Further, the public official most familiar with the Rewald matter, the court-appointed Bankruptcy Trustee, has repudiated each and every allegation made by ABC of which he had personal knowledge. Specifically, he found (a) no substantial link or major financial transactions between the CIA and Rewald, and (b) no evidence to indicate that any of the "missing" \$20 million went to the CIA or any CIA project. A summary of the Trustee's findings is provided herewith as Exhibit 4. Significantly, other members of the media took the trouble to look into and report the findings of the Trustee. See article from the Honolulu Star Bulletin of 21 May 1984, provided herewith as Exhibit 5.

clearly suffice as attacks upon moral turpitude intended to be covered by the Personal Attack Rule. Complainant also contends that as an "investigative report" the attacks should not be insulated by the bona fide newscast exemption to the rule, but rather more appropriately should be treated as attacks contained in nonexempt bona fide news documentaries.

Discussion

4. The CIA's complaint provides no basis for Commission action because the allegations fail to establish prima facie complaints sufficient to initiate a Commission inquiry or sanctions.

News Distortion

5. It is well settled that the Commission is not the national arbiter of the "truth" of news programming. Nor is the Commission prepared to judge the wisdom, accuracy, or adequacy with which particular news coverage may have been handled on the air. The Commission does act appropriately to protect the public interest where it receives extrinsic evidence of deliberate distortion of news programming. Hunger in America, 20 FCC 2d 143, 150 (1969). This kind of evidence includes testimony, in writing or otherwise, from "insiders" or persons who have direct personal knowledge of an intentional falsification of the news. The Commission has emphasized it is particularly concerned with extrinsic evidence which reveals orders to falsify the news by a licensee, its top management, or its news management. In a democracy, dependent upon the fundamental rights of speech and the press, the Commission cannot authenticate the news that is broadcast nor should it try to do so.

6. The complaint certainly demonstrates the CIA's strong disagreement with the accuracy of ABC's news coverage. However, no extrinsic evidence demonstrating that ABC knowingly distorted news programming has been provided. As emphasized above, action in this area is warranted only when the Commission is furnished with extrinsic evidence that demonstrates that a broadcaster knew elements of a news story were false or distorted, but, nevertheless, proceeded to air such programming. We have not been provided with material showing that any ABC personnel deliberately falsified or distorted the content of broadcasts addressed by this complaint. The fact that officials of the CIA repudiated claims made by ABC both before and subsequent to the subject broadcasts, and that various public records might contradict aspects of ABC's news coverage do not in and of themselves demonstrate the requisite intent by ABC to deceive its audience. The Commission will not infer such intent. In The Selling of the Pentagon, 30 FCC 2d 150, 152 (1971), the Commission stated:

Lacking extrinsic evidence or documents that on their face reflect deliberate distortion, we believe that this government licensing agency cannot properly intervene. It would be unwise and probably impossible for the Commission to lay down some precise line of factual accuracy -- dependent always on journalistic judgment -- across which broadcasters must not stray. [Emphasis added.]

If the existence of contradictory information concerning news programming would suffice for imposition of Commission inquiry and possible sanctions, news programming would surely be severely inhibited. Anything short of this threshold burden of showing deliberateness would jeopardize critical First Amendment rights so important to free and robust news coverage.

Fairness Doctrine

7. The Fairness Doctrine requires broadcasters to inform the public by broadcasting discussions of controversial issues of public importance and, having presented one side of such an issue, to afford a reasonable opportunity for the presentation of contrasting points of view. ^{4/} It is the responsibility of the broadcaster to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue in its overall programming. Decisions as to what type of programming to present as well as the appropriate spokespersons to present a particular viewpoint are left to the journalistic discretion of the licensee.

8. The Commission will review complaints, based on a broadcaster's alleged failure to present programming on controversial issues of public importance or its failure to provide opportunities for the presentation of contrasting views, to determine whether the broadcaster acted reasonably and in good faith. Because sensitive First Amendment rights are at stake, the Commission has formulated the required elements of a prima facie Fairness

^{4/} Fairness Report, 48 FCC 2d 1, 9 (1974).

Doctrine complaint, 5/ to ensure that broadcasters will not be burdened with having to respond to frivolous or insufficiently documented and defined complaints.

9. The CIA's complaint is deficient in several respects. Assuming there can be no doubt as to the public importance of "the participation by the Central Intelligence Agency in illegal acts, including assassination," the CIA has still failed to submit evidence concerning the controversiality of that issue. In brief, to be "controversial," an issue must be "the subject of vigorous debate with substantial elements of the community in opposition to one another." 6/

10. The complainant also fails to describe its viewing habits sufficiently to support its conclusion that ABC did not present contrasting viewpoints in its overall programming. Indeed, it appears that the CIA has focused exclusively upon the four broadcast segments of "ABC World News Tonight" for its contention that only one side of the issue has been aired. In making this showing a complainant must indicate those time periods when a particular station or network's programming was viewed or listened to, including the frequency and length of time. This requirement for viewing

5/ Where a complaint is made to the Commission, the Commission expects a complainant to submit specific information including:

- (1) the broadcaster (station or network) involved;
- (2) the specific issue of a controversial nature broadcast (complainant should include an accurate summary of the views broadcast);
- (3) the date and time when the issue was broadcast;
- (4) the basis for the claim that the issue was controversial and of public importance;
- (5) reasonable grounds for the claim that the station or network broadcast only one side of the issue in its overall programming (Such claim might be based on an assertion that the complainant is a regular listener or viewer; that is, a person who consistently or as a matter of routine listens to the news, public affairs and other nonentertainment programs carried by the broadcaster involved. This does not require that the complainant listen to or view the station 24 hours a day, seven days a week);
- (6) copies of correspondence between the complainant and the broadcaster; and
- (7) whether the broadcaster has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on that issue.

Procedure Manual, 39 Fed. Reg. 32288, 32290 (1974); Fairness Report, 48 FCC 2d 1, 17 (1974).

6/ For a fuller discussion of the relevant criteria for whether an issue is "controversial," see Fairness Report, at 11-12.

habit specificity serves to allow a broadcaster, and ultimately the Commission, to determine whether the complainant has established that a licensee's overall programming complied with the Fairness Doctrine. 7/

11. In addition, before seeking Commission action, complainants are required to provide a broadcaster with all of the elements of a prima facie fairness complaint. 8/ This allows the Commission to consider the reasonableness of the broadcaster's determinations as a part of its consideration of the other requisite elements of a complaint. While the CIA has apparently informed ABC of its views concerning the subject news coverage, it is not clear whether the required information was ever provided the network. Even if the CIA had shown the controversiality of the issue, and had sufficiently specified its viewing habits, the Commission would still be unable to ascertain the reasonableness of ABC's position. We reiterate that the Commission will not burden the broadcaster with inquiry until the complainant has satisfied its procedural burdens.

Personal Attack

12. If a broadcaster airs an attack upon the honesty, character, integrity or like personal qualities of an identified person or group during the presentation of views on a controversial issue of public importance, it is the duty of the broadcaster to notify the person or group attacked, to send a transcript or an accurate summary of the broadcast, and to afford an

7/ A pertinent portion of the Fairness Report, at 19-20 states:

We do not believe this requirement [regarding the necessary showing for overall programming] to be unduly burdensome, as contrasted to the heavy burden we would place on all stations if we required them to provide evidence of compliance with the Fairness Doctrine based on complaints which assert that one program [or a limited series of programs] has presented only one side of an issue.

8/ The Procedure Manual states:

If you believe that a broadcaster (station or network) is not meeting its obligation to the public under the fairness doctrine, you should complain first to the broadcaster. If you believe that a point of view is not being presented and wish to act as spokesman for that point of view, you should first notify the broadcaster. Barring unusual circumstances, complaints should not be made to the Commission without affording the broadcaster an opportunity to rectify the situation, comply with your request, or explain its position. [Id. at 32290 (emphasis added).]

opportunity for response. 9/ However, and especially relevant here, bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events are exempt from the Personal Attack Rule. 10/ Moreover, even if the newscast exemption did not apply, the CIA's failure to show that the broadcasts it identified involved discussion of a controversial issue of public importance would preclude any consideration of their personal attack arguments.

13. In light of the foregoing, no further action is warranted, and the complaint of the CIA IS DENIED.

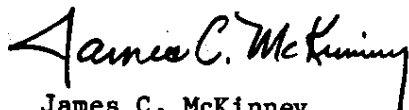
9/ We note the CIA uses the term "libel" several instances in its complaint. We wish to underscore here that the Personal Attack Rule is intended to inform the public concerning controversial public issues, not to serve as an administrative law substitute for adjudicating private party claims of defamation.

10/ We disagree with complainant's suggestion that as an "investigative report" this news story lost its exempt status as part of a bona fide newscast. The Commission exempted bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events from the Personal Attack Rule to prevent any possible inhibiting effect it might have upon robust, unfettered news journalism. Bona fide news documentaries were not exempted because the Commission recognized that they are assembled over long periods of time during which the broadcaster has sufficient opportunity to seek out contrasting points of view, particularly those of the person or group attacked. See In re Amendment of Rules, 12 FCC 2d 254, 252 (1968). This does not mean, however, that any news story contained in an otherwise exempt category which may have involved investigation, or somehow lacked total spontaneity, must be treated like a news documentary. If this were the case a broadcaster would have to apply some hypothetical yardstick to every news story and reach a determination of whether it should be labeled bona fide newscast or documentary material. Clearly, absent a showing of bad faith or unreasonableness, the inhibiting implications upon news coverage implicit in the CIA's argument would remove the benefits intended by the news exemptions in the first place. This reasoning is consistent with the Commission's previous treatment of the news exemptions to Section 315. In Citizens for Reagan, 58 FCC 2d 925, 927 (1976), the Commission stated:

The inclusion of an interview within a newscast, which if broadcast outside the newscast would not be exempt, is within a station's journalistic discretion and, in and of itself, would not preclude the interview from exempt status pursuant to Section 315(a)(1) unless it has been shown that such a decision is clearly unreasonable or in bad faith.

No showing of bad faith or unreasonableness has been made.

14. Staff action is taken here under delegated authority. Application for Review by the full Commission may be requested within thirty days of the date of public notice of this document (see Commission Rule 1.4(b) [47 C.F.R. § 1.4(b)]) by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration and, if mailed, should be sent by certified mail. Copies must be sent to the parties to the complaint. See Commission Rule 1.115 (47 C.F.R. § 1.115).



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